

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 1493 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE KSHITIJ R.VYAS**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**RAMANBHAIKHANABHAIROHIT - Petitioner(s)**  
**Versus**  
**DEPUTYCOMMISSIONEROFPOLICE & 2 - Respondent(s)**

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**Appearance :**

MR YN OZA for Petitioner(s) : 1,  
Ms Darshana S Pandit, Asst.GOVERNMENT PLEADER for Respondent(s) : 1  
- 3.

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**CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS****Date : 07/10/2005****ORAL JUDGMENT**

The petitioner, in this petition filed under Article 226 of the Constitution of India, has challenged the order dated 6/8.7.1991 Annexure 'A' , passed by the Deputy Police Commissioner (Administration), Vadodara City, discharging him of service.

2. The petitioner joined in Baroda City Police as unarmed police constable on 15.11.1990 and was sent for training on 1.12.1990 at Police Training School at Baroda. According to the petitioner, for five months he has taken the training with all sincerity and diligence and there was no complaint against him. It is averred by the petitioner that on 28.4.1991, while he was in training, as he was not feeling well, he left the police training school to see doctor. The doctor advised him to take rest as his mental condition was not good. The petitioner, therefore, went to his native place for treatment. He presented himself before the authority on 4.5.1991. However, the authority did not allow him to resume duties and was informed to present himself before the Commissioner of Police. As per instructions of Dy. Commissioner of Police, again he went to the police training school. However, the authority did not allow him to resume the training and he was served with an order of discharge from service dated 5.7.1991. The petitioner has challenged the said order as unreasonable and arbitrary and prayed that he be reinstated with all consequential benefits.

2. On behalf of respondent no.2, Dy.Commissioner of Police, Baroda City has filed affidavit-in-reply controverting the averments made in the petition. It is stated that the petitioner has been given appointment as unarmed police constable w.e.f. 15.11.1990 purely on temporary basis. At

the time of recruitment, an agreement was executed between the Government and the petitioner for a period of three years in which it was stated that if the petitioner has been relieved from service on account of misconduct on the part of the petitioner, the petitioner shall have to pay bond amount. The petitioner was sent for training to police training school along with other recruits on 1.12.1990. During the training the petitioner was found irregular and absent on six occasions between 9.12.1990 and 23.4.1991. Over and above this period, he was found absent in the school for a period of 37 days. When the petitioner was found irregular constantly, the Principal of Police training school has discontinued him from the school and by his office letter dated 4/5.6.1991 sent him back to his original unit at Vadodara as per guidelines issued by Director General of Police by his letter dated 13.10.1966 and 23.3.1983 for discharge of trainees, if they are found irregular in training. On the basis of those guidelines, the respondent authorities has issued show cause notice dated 21/26.6.1991 to the petitioner for showing detailed reasons for his irregularities as per rule 89 (3) (c) of Police Manual, Part-I. Thus, the petitioner was given opportunities to defend his case, in spite of the fact, no explanation has been given by him and, therefore, the impugned order came to be passed.

3. Learned Sr.Advocate, Mr Y N Oza has submitted that the penalty of

discharge imposed upon the petitioner is quite inconsistent with the misconduct committed by the petitioner and, therefore, the same is unjust and unreasonable and harsh and would result into economic death, inasmuch as he is the only earning member and has to maintain his family. In support of his submission, he has placed reliance on a decision taken by this court in the case of *Dineshbhai Somabhai Lata v. Superintendent of Police* in Letters Patent Appeal No.2492 of 2004 decided on 8.12.2004 and a reported decision in the case of *Sardarsingh Devisingh v. Superintendent of Police, Sabarkantha*, reported in 1985 GLH 940. On the other hand, Ms. Darshana Pandit, learned AGP, while supporting the decision of the respondent authority, submitted that as the petitioner have been found constantly irregular in the training, the respondent was justified in discharging him from service. According to her, the petitioner was given opportunities to defend his case and since he failed to reply the show cause notice, he is not entitled to any relief as prayed for in the petition.

4. I have gone through the averments made in the petition as well as in the reply and the decisions cited before the court. From the reply affidavit, following facts emerge:

The petitioner throughout the period of training i.e five months, has remained absent on different occasions. The petitioner

has not filed any rejoinder to controvert the said facts. The petitioner has also not given any explanation to the show cause notice dated 21/26.6.1991 about his irregular attendance and therefore, there was no option for the respondent no.1 but to pass the order of discharge. In spite of this undisputed facts, the matter is required to be considered on a different view point namely; the penalty of dismissal inflicted on the petitioner is commensurate with his established guilt. This court, in the case of *Sardarsingh Devisingh's case* (supra), while dealing with the case of the petitioner who was a policeman, had remained absent without leave for 150 days, while holding that the said act is certainly a misconduct for which the petitioner can be visited with one of the penalties including the penalty of removal or dismissal observed as under:

“When an authority is conferred with the power to inflict one of the several penalties such as caution or censure, reprimand, extra drill or duty, fine, stoppage of increments, reduction in rank, removal or dismissal, it is obvious that the authority must give a serious thought to the question of choice of penalty. The choice cannot be arbitrary but must depend on the nature of misconduct established in a given

case. Just as a road roller cannot be brought to crush a fly, so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave. The consequences of removal or dismissal from service are severe, sometimes the entire family is ruined because another job or work may not be easy to find and, therefore, it is all the more necessary that the punishment of removal/dismissal should be invoked sparingly and in cases which can be described as gross, such as, receiving illegal gratification, misappropriation or defalcation of public funds, behaviour which is morally reprehensible, gross abuse or misuse of authority etc. However, if a policeman remains absent without leave, it certainly has an adverse effect on a disciplined force which can be remedied by imposing a lighter penalty such as withholding of increments or the like. Even thereafter if he does not show improvement in future and commits a similar violation of the conduct rules, he can be visited with a harsher penalty and ultimately, if need be, removal from service also. It is, however, necessary that before the extreme penalty is imposed, he is given an opportunity to improve by imposing a lighter penalty which would no doubt pinch him but not ruin

him. If a breadwinner is deprived of a job for misconduct of remaining absent without leave, it is not only he who suffers on that account but the entire family faces economic ruination. It is, therefore, necessary that the authority which is charged with the duty to select the punishment to be imposed on a delinquent for proved misconduct must weigh all these pros and cons and after a serious application of mind decide on the punishment which can be substantiated as commensurate or proportionate to the established guilt.

5. Agreeing with the aforesaid decision, I am also of the view that even though the respondents have established the cases against the petitioner of remaining irregular and absent on various days – in all 37 days without prior permission, the said fact by itself will not be a ground to discharge the petitioner without giving an opportunity to improve by imposing lighter penalty to the petitioner. There is nothing in the affidavit-in-reply suggestive of the fact that the authorities have considered to select punishment to be imposed on the petitioner before imposing the extreme penalty.

6. In the LPA (No.2492 of 2004) of *Dineshbhai Somabhai Lata* (supra), the Division Bench of this court in an identical situation, reinstated the petitioner but as it was pointed out, the police constable

was sent for training to police training school where he remained absent without any valid reason for a period of 11 days which was considered as serious misconduct and hence he was discharged and the Division Bench allowed the appeal and set aside the order of discharge and the Superintendent of Police was directed to reinstate the appellant with continuity giving all consequential benefits except backwages. Mr Oza submits that the present petitioner is ready to accept reinstatement without any backwages, in case the petition is allowed.

7. In view of the above discussion, this petition is allowed. The impugned order dated 6/8.7.1991 passed by the Dy. Police Commissioner, (Administration), Vadodara is quashed and set aside. The respondent is directed to reinstate the petitioner on his original post within four weeks from the date of this order. After he is confirmed, he be given all consequential benefits i.e continuity in service etc. However, he is not entitled to any backwages for the entire period. Rule is made absolute accordingly. No order as to costs.

[Kshitij R Vyas, J.]

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